

AN ACT

ENTITLED, An Act to define certain terms related to liability for agritourism activities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 20-9-12 be amended to read as follows:

20-9-12. Terms used in §§ 20-9-12 to 20-9-18, inclusive, mean:

- (1) "Charge," the admission price or fee asked in return for invitation or permission to enter or go upon the land. Any nonmonetary gift to an owner that is less than one hundred dollars in value may not be construed to be a charge;
- (2) "Land," land, trails, water, watercourses, private ways and agricultural structures, and machinery or equipment if attached to the realty;
- (3) "Outdoor recreational purpose," includes, but is not limited to, any of the following activities, or any combination thereof: hunting, fishing, swimming other than in a swimming pool, boating, canoeing, camping, picnicking, hiking, biking, off-road driving, nature study, water skiing, winter sports, snowmobiling, viewing, or enjoying historical, archaeological, scenic, or scientific sites;
- (4) "Agritourism activity," any activity carried out on a farm, on a ranch, in a forest, or on an agribusiness operation that allows members of the general public, for recreational, entertainment, or educational purposes, to view or participate in agricultural activities, including farming, ranching, historical, cultural, harvest-your-own, or nature-based activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. An activity is not an agritourism activity if the participant is paid to participate in the activity;
- (5) "Owner," the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.

Section 2. That § 20-9-13 be amended to read as follows:

20-9-13. Except as provided in § 20-9-16, an owner of land owes no duty of care to keep the land safe for entry or use by others for outdoor recreational purposes or agritourism activities, or to give any warning of a dangerous condition, use, structure, or activity on the owner's land to persons entering for outdoor recreational purposes.

Section 3. That § 20-9-14 be amended to read as follows:

20-9-14. Except as provided in § 20-9-16, an owner of land who either directly or indirectly invites or permits without charge any person to use the owner's property for outdoor recreational purposes or agritourism activities, including any person who is on the property pursuant to § 41-9-8, does not thereby:

- (1) Extend any assurance that the land is safe for any purpose;
- (2) Confer upon any person the legal status of an invitee or licensee to whom a duty of care is owed; or
- (3) Assume responsibility for, or incur liability for, any injury to persons or property caused by an act of omission of the owner as to maintenance of the land.

Section 4. That § 20-9-15 be amended to read as follows:

20-9-15. Unless otherwise agreed in writing, the provisions of §§ 20-9-13 and 20-9-14 apply to the duties and liability of an owner of land leased to the state or any political subdivision of the state for outdoor recreational purposes or agritourism activities.

Section 5. That § 20-9-16 be amended to read as follows:

20-9-16. Nothing in §§ 20-9-12 to 20-9-18, inclusive, limits in any way any liability which otherwise exists:

- (1) For gross negligence or willful or wanton misconduct of the owner;
- (2) For injury suffered in any case where the owner of land charges any person who enters or

goes on the land for the outdoor recreational use of the land or for agritourism activity, except that in the case of land leased to the state or a political subdivision of the state, any consideration received by the owner for the lease may not be deemed a charge within the meaning of this section nor may any incentive payment paid to the owner by the state or federal government to promote public access for outdoor recreational purposes or agritourism activities be considered a charge; or

- (3) For injury suffered in any case where the owner has violated a county or municipal ordinance or state law which violation is a proximate cause of the injury.

Section 6. That § 20-9-17 be amended to read as follows:

20-9-17. Sections 20-9-12 to 20-9-18, inclusive, may not be construed to create a duty of care or ground of liability for injury to persons or property, or relieve any person using the land of another for outdoor recreational purposes or agritourism activities from any obligation which the person may have in the absence of §§ 20-9-12 to 20-9-18, inclusive, to exercise care in his or her use of the land and in his or her activities on the land, or from the legal consequences of failure to employ such care.

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I certify that the attached Act
originated in the

SENATE as Bill No. 75

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 75

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State